Report of the Chief Electoral Officer with Respect to the use of the Chief Electoral Officer's Emergency Powers

November 19, 2009

ELECTIONS SASKATCHEWAN

Office of the
Chief Electoral Officer

November 19, 2009

The Honourable Don Toth
Speaker of the Legislative Assembly
129 Legislative Building
Regina, Saskatchewan
S4S 0B3

Honourable Speaker:

Pursuant to subsection 7(6) of *The Election Act, 1996,* (The Act), I submit to you, within 60 days of Polling Day, a written report respecting my actions pursuant to subsection 7 (1) of The Act taken during the September 21, 2009 Regina Douglas Park By-Election.

Included in the Report I have highlighted four of the recommendations from the *Report of the Chief Electoral Officer - Volume III – Recommendations for Changes to The Election Act, 1996 - Twenty-Sixth Provincial General Election ("Volume III")* previously tabled in the Legislative Assembly on April 30, 2009. Adoption of these four recommendations would greatly improve the chances of recruiting a full complement of capable poll officials across the Province for the November 7, 2011 General Election. It would also reduce the likelihood of the Chief Electoral Officer ever having to use the CEO's emergency powers for the purpose of recruiting poll officials from outside the constituency.

I would be pleased to meet with you at your convenience should you wish to discuss the recommendations in more detail.

Respectfully submitted,

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Acting Chief Electoral Officer

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Report of the Chief Electoral Officer

This report is written as per subsection 7(6) of *The Election Act, 1996*. The requirement is to prepare and submit to the Speaker, within 60 days of Polling Day, a written report respecting actions taken pursuant to subsection 7 (1) of *The Election Act, 1996*.

Throughout the recent by-elections, the Returning Officers in the Regina Douglas Park and Saskatoon Riversdale constituencies had a difficult time recruiting both enumerators and poll officials.

Returning Officers for the two constituencies were ultimately able to find enough enumerators within their respective constituencies. However, in the Regina Douglas Park constituency, a new trend emerged where only half of the appointed enumerators agreed to serve as a Deputy Returning Officer (DRO) or Poll Clerk on Election Day. The usual percentage is 75% - 90%. Reasons cited were:

- the rate of pay is too low (to take a day off work the individual would lose money, whereas enumeration can be done in the evening);
- just not enough pay for 13-14 hours;
- getting too old to sit for 13-14 hours; and
- the extra $10 for Supervisory Deputy Returning Officers is not enough to compensate for the extra responsibilities of the position.

The concern of potential H1N1 may also have affected the decision of some persons who have been poll officials in the past.

In order to assist with recruiting, the Acting Chief Electoral Officer gave numerous interviews with media outlets (which received good coverage), previous election workers were contacted, posters advertising the positions and rate of pay were widely distributed, and other electoral agencies were called upon to provide names of possible workers.

Despite the efforts of the Returning Officer and her staff and the Office of the Chief Electoral Officer, Noel Selinger, Returning Officer, Regina Douglas Park requested that poll officials from outside the constituency be used. At the time of her request, the Returning Officer was short three Supervisory Deputy Returning Officers. The Returning Officer did not anticipate any problem filling these positions with experienced persons who applied from other constituencies. The Returning Officer had four pages of persons who phoned the Returning Office or applied via the Elections Saskatchewan website.

Therefore, pursuant to section 7(1) of *The Election Act, 1996* (The Act), I gave my approval for the Returning Officer of Regina Douglas Park to utilize poll officials for the Supervisory Deputy

Returning Officers positions who need not be residents of the Regina Douglas Park constituency but who otherwise satisfy the criteria for appointment.

- three Supervisory Deputy Returning Officers from outside the constituency were utilized on Election Day.

Further, I gave my permission that if any of the poll officials from the constituency were sick on Election Day, and if spares from the constituency were not available, then "constables" or other workers that were not from the constituency could be re-assigned to take the place of any vacancies.

As required by subsection 7(3) of The Act, I gave notice on September 16, 2009 to every registered political party in the Province and every candidate in the Constituency of Regina Douglas Park. See Appendix I for copy of the letter sent.

On Election Day, September 21, 2009 due to illness or other inability to take on or complete their duties, the following additional positions were filled with out-of-constituency persons:

- one Deputy Returning Officer*
- three Poll Clerks**

* One spare moved to Deputy Returning Officer position.
** Two spares moved to Poll Clerk position and one Constable moved to Poll Clerk position.

Recommendations

In Saskatoon Riversdale the poll officials were recruited from within the constituency. However, the Office had a difficult time recruiting and some of the individuals hired had difficulty completing their duties.

Given that the recruitment for the Regina Douglas Park and Saskatoon Riversdale By-Elections proved to be so difficult; it could well be a warning about the challenges Elections Saskatchewan may face for the November 7, 2011 General Election.

To combat the dwindling and aging pool of experienced election workers, the Office has begun a new outreach program. A pilot project was put in use via setting up a booth at the University of Regina Career Fair on September 28, 2009. At the event, students were urged to enter their names in for a chance to win one of twenty-five "memory sticks", the entry form had a check off if they wished to be contacted about any future election positions. This pilot gathered a new database of 300+ names in a younger demographic.

In the year 2011 this outreach program will be further expanded to attend the numerous fairs, career days, etc. across the Province. As promising as this new outreach program appears to be, other solutions are also needed in order to find enough qualified persons to fill all the election official positions for the 2011 General Election.

In the *Report of the Chief Electoral Officer - Volume III – Recommendations for Changes to The Election Act, 1996 - Twenty-Sixth Provincial General Election ("Volume III")* which was tabled in the Legislative Assembly on April 30, 2009, four of the 120 recommendations would eliminate the use of the Chief Electoral Officer's Emergency Powers for the purpose of getting poll officials from outside the constituency.

The four recommendations to be noted are:

That *The Election Act, 1996* be amended to:

1. include a provision for the Chief Electoral Officer, in writing, to authorize the appointment of eligible voters from outside the constituency in the case of an emergency or for specialized polls such as hospital polls, remand centre polls and mobile polls; and
2. reduce the minimum age for Poll Clerks (and Information Officers) to age 16.

The above two recommendations are outlined more fully on Pages 17 – 18 of *"Volume III"* – See *Appendix II*.

That *Schedule of Fees Regulation* be amended:

3. on or before January 2010 in order to allow for Returning Officer recruitment for any vacancies to be completed prior to the re-mapping process, for all 58 constituencies, which begins April 1, 2010 for the November 7, 2011 General Election; and

4. so that a formula be used to adjust rates similar to the formula used to adjust the expense limits for candidates and registered political parties in January every four years starting with January 2014. Specific recommendations with regards to the Schedule of Fees will come from the Office of the Chief Electoral Officer for consideration in the fall of 2009.

The above two recommendations are outlined more fully on Page 73 of *"Volume III"*. See *Appendix III*.

David A. Wilkie
Acting Chief Electoral Officer
November 2009

APPENDIX I

SASKATCHEWAN

OFFICE OF THE
CHIEF ELECTORAL OFFICER

September 16, 2009

To: Registered Political Parties
Candidates in the Regina Douglas Park Constituency

From: David A. Wilkie
Acting Chief Electoral Officer

Regarding the Use of Emergency Powers for Poll Officials Outside the Constituency

Throughout the by-elections the Returning Officers in the Regina Douglas Park and Saskatoon Riversdale constituencies have had a difficult time recruiting both enumerators and poll officials.

Returning Officers for the two constituencies were ultimately able to find enough enumerators within their respective constituencies. However, in the Regina Douglas Park constituency, a new trend emerged where only half of the appointed enumerators agreed to serve as a Deputy Returning Officer (DRO) or Poll Clerk on Election Day. The usual percentage is 75% - 90%. Reasons cited were:

- the rate of pay is too low (to take a day off work the individual would lose money, whereas enumeration can be done in the evening);
- just not enough pay for 13-14 hours;
- getting too old to sit for 13-14 hours; and
- the extra $10 for Supervisory Deputy Returning Officers (SDRO) is not enough to compensate for the extra responsibilities of the position.

The concern of potential H1N1 may also have affected the decision of some persons who have been poll officials in the past not to do the job this by-election.

In order to assist with recruiting, the Acting Chief Electoral Officer gave numerous interviews with media outlets (which received good coverage), previous election workers were contacted, posters advertising the positions and rate of pay were widely distributed, and other electoral agencies were called upon to provide names of possible workers.

Despite the efforts of the Returning Officer and her staff and the Office of the Chief Electoral Officer, I have received a request from Noel Selinger, Returning Officer, Regina Douglas Park, that Poll Officials from outside the constituency be used. At the present time she is short three Supervisory Deputy Returning Officers. The Returning Officer does not anticipate any problem filling these positions with experienced persons that applied from other constituencies, from the four pages of persons who phoned the Returning Office or applied via the Elections Saskatchewan website.

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Therefore, pursuant to section 7(1) of *The Election Act, 1996* (the Act), I am giving my approval for the Returning Officer of Regina Douglas Park to utilize poll officials for the positions noted above who need not be residents of the constituency but who otherwise satisfy the criteria for appointment.

Further, if any of the poll officials from the constituency are sick on Election Day, and if spares from the constituency are not available, then "constables" or other workers that are not from the constituency, could be re-assigned to take the place of ill poll officials from the constituency.

As required by subsection 7(3) of the Act, I now give notice of the foregoing to every registered political party and every candidate in the Constituency of Regina Douglas Park.

Sincerely yours,

David A. Wilkie
Acting Chief Electoral Officer

the event of a family emergency. In the 26th General Election, there were several husband and wife or other family member combinations for the position of Returning Officer and Election Clerk. In the 2007 general election in one instance, both the Returning Officer and Election Clerk, who were husband and wife, effectively resigned four days before Election Day. In two other cases, family illness created the potential for staffing problems in the Office. Election Canada's legislation includes the provision that a Returning Officer shall not appoint his or her spouse, common-law partner, child, mother, father, brother, sister, the child of his or her spouse or common-law partner, or a person who lives with him or her as an Assistant Returning Officer. Ontario, Québec, Northwest Territories and Nunavut have similar legislation and Elections Alberta has recommended a similar amendment.

Recommendations:

That *The Election Act, 1996* be amended so that:

1. *(a)* all Returning Officer terms end upon the coming into force of this legislation and hereafter six months after the day a candidate is declared elected;
   (b) a person may be re-appointed as a Returning Officer if his or her performance has been satisfactory;
2. once appointed a Returning Officer cannot be a member of, or contribute to a candidate, constituency association or political party at either the Provincial or Federal level or engage in partisan political activities;
3. the reasons for replacement of a Returning Officer be strengthened and clarified;
4. an emergency provision for the Returning Officer or Election Clerk to be appointed from outside the constituency is included;
5. provisions for a leave of absence without pay and without penalty for Returning Officers and Election Clerks during the election period is included;
6. the term "Election Clerk" is changed to "Assistant Returning Officer" in any and all instances; and
7. the hiring of immediate family members by the Returning Officer for the role of Election Clerk be prohibited.

ELECTION OFFICERS

1. Provisions for Appointment of Election Officers from Outside Constituency [Section 10, 13, 20 & 37]

Background:

Currently all poll officials have to work in the constituency in which they reside. While every effort should be made to find suitable eligible voters in the constituency to appoint as election officers, there may be emergency situations where no qualified individual may be found on short notice.

In the 26th General Election, as in previous elections, some Returning Officers had difficulty in finding eligible, qualified election officials living in their constituency. In some cases officials who were less qualified were hired at the same time as other constituencies had a waiting list of more qualified individuals who could have served as poll officials in the adjoining constituency. The legislation in Alberta allows that if there is not a sufficient number of qualified persons in the

constituency, the Returning Officer may appoint qualified persons from any other constituency. Canada, Manitoba, Newfoundland and Labrador, Nunavut and Yukon have similar legislation.

In the 26th General Election some Returning Officers with large hospital polls found it difficult to find enough qualified poll officials for Election Day. For hospital polls and other specialized polls, individuals who are used to dealing with patients, especially older patients, are hard to find at the best of times. Typically most hospitals have a pool of volunteers that could be recruited to take on the poll official roles in hospitals. Often the volunteers do not live within the specific constituency in which the hospital is located. Polls in remand centres and mobile polls may also have similar problems finding poll officials that are resident in the constituency in which the institution is located. This recommendation was first made in the Annual Report of 2006 - 2007 and has been updated.

2. Poll Clerk - Reduction of Minimum Age [Section 13]

Background:

The labour pool from which poll officials come is getting older. Statistics from the October 14, 2008 federal election show that the age group 60-69 comprises the largest percentage of electoral workers in Saskatchewan (34.88%). When the age group 70-79 and 80+ are added, in about 50% of election workers are 60 and over. This is a trend across the country. At the same time, the voter turnout for young voters age 18-24 gets lower and lower. In the last round of amendments to The Act, the minimum age of Candidates Representatives was lowered from age 18 to age 14. In debriefings with Returning Officers and representatives of registered political parties, held after the 26th General Election, there were no complaints about the lowering of the minimum age of candidates' representatives. New Brunswick has amended its legislation to allow the minimum age of Poll Clerks to be lowered to 16. Canada allows 16 and 17 years to be poll officials if the Returning Officer is having difficulty finding enough poll officials. Similarly in Ontario, 16 and 17 year old enumerators can be approved by the Chief Electoral Officer upon request from the Returning Officer. Newfoundland and Labrador has similar legislation. The age requirement for a Poll Clerk to be reduced from eighteen to sixteen years of age is being considered in Alberta.

The young Poll Clerks would be paired with experienced Deputy Returning Officers. The lowering of the minimum age for Poll Clerks and the possibility that school divisions may wish to schedule a professional development day to coincide with the new fixed election date of Monday, November 7, 2011. This would provide a new pool of younger poll officials and give soon-to-be-voters an inside view of the electoral system. It has been noted by Returning Officers in Saskatchewan and elsewhere in the country, that when young adults act as poll officials, they often talk about their training and the fact that they will be a poll official on Election Day. This may spur on their friends to take an interest in voting as well. In Québec, for example, Election Day is a day off/vacation day for students.

3. Information Officer [Section 11 and Regulations]

Background:

Currently subsection 11(1) of The Act refers to the Returning Officer maintaining peace and order but does not make reference to "Constable"; however the Election Regulation for Compensation refers to

APPENDIX III

Compensation of Election Officers [Section 15]

Background:

In the 26th General Election the need for numerous changes in the Schedule of Fees Regulation were identified. Currently one category, clerical assistance is below the provincial minimum wage. The prosperous economy in the Province means that rates for all positions must be raised to remain competitive and to be able to hire qualified individuals. Positions used in the 2007 general election which have been paid out of the Office of the Chief Electoral Officer such as Automation Coordinator should be added to the Schedule of Fees. In practice, election workers have not been subject to labour legislation with respect to overtime, statutory holidays and vacation pay. Manitoba has clarified this fact by stipulating these exemptions in the Schedule of Fees Regulation. The Office will do a cross-jurisdiction comparison in order to draft a proposed Schedule of Fees. Rates should be adjusted periodically to remain competitive. In order to allow for Returning Officer recruitment prior to the April 1, 2010 launch of the remapping of polling subdivisions within each constituency, the Schedule of Fees should be amended on or before January 1, 2010.

Recommendations:

That Schedule of Fees Regulation be amended:

1. on or before January 2010 in order to allow for Returning Officer recruitment for any vacancies to be completed prior to the re-mapping process, for all 58 constituencies, which begins April 1, 2010 for the November 7, 2011 General Election; and
2. so that a formula be used to adjust rates similar to the formula used to adjust the expense limits for candidates and registered political parties in January every four years starting with January 2014. Specific recommendations with regards to the Schedule of Fees will come from the Office of the Chief Electoral Officer for consideration in the fall of 2009.